

General Information Letter: Employee whose employer fails to withhold Illinois income tax is liable for the tax, and the employer will be liable for interest and penalties even if the employee pays the tax.

January 9, 2002

Dear:

This is in response to your letter dated December 3, 2001 in which you state the following:

I got your name and address from on-line. I hope you can get this matter resolved before it's too late. I was employed by COMPANY, ADDRESS, CITY, ZIP CODE since 9/87. I was recently terminated from COMPANY but not before I could get this resolved with the payroll dept. On April 15th, 2001 taxes were deducted from my paycheck, however, the YTD contributions remained the same. I brought it to the attention of the payroll dept., at that time and every pay period since and was told it would be corrected. I was terminated on 11/15 and AGAIN the same thing happened – now I am two paychecks short. The company has been going thru financial problems the last few years with employees quitting from UNION Local XXX, UNION Local XXX and a couple of other national unions due to non-payment of benefits and pending judgments – COMPANY deducted contributions from employee's checks and did not pay the unions.

When I went to Dept. of Employment Security on 11/16/01 and told my advisor this he pulled up my account and noticed they hadn't paid my taxes since 3/31/01 and advised me to contact Labor Relations Board who then said to call IRS, Il. Dept. of Revenue and SSA. I would just like this rectified so I will not be out the money deducted from my check.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

In general, please note that the Illinois Income Tax Act ("IITA") imposes a tax measured by net income on individuals for the privilege of earning or receiving income in or as a resident of Illinois. Accordingly, the ultimate responsibility for payment of the Illinois income tax rests on you. However, and pursuant to Section 701 of the IITA, every employer maintaining an office or transacting business within Illinois is required to withhold income tax on compensation paid in this State if federal withholding is also required. Section 706 of the IITA provides that if an employer fails to deduct and withhold Illinois income tax, and the amount required to be deducted and withheld is paid, the tax shall not be collected from the employer. However, the employer shall not be relieved from liability for penalties and interest as indicated in Section 1002(d) of the IITA.

We commend you for paying careful attention to your pay stub information. As you know, both the IRS and the Illinois Department of Revenue request a copy of your W-2 Form when you file your tax returns. The information on the W-2 form may show the correct amount that was withheld by your former employer in which case your problem would be resolved. If, after receiving your W-2 Forms

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the problem is not resolved, we suggest that you contact our Problems Resolution Bureau at 101 West Jefferson Street, Suite 3-515, Springfield, IL 62792, or call them at (217) 785-7313.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax